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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 BEVERLY NUNES, individually and on behalf) CASE NO.: 14-cv-02843-VC
24 of a class of similarly situated individuals,)
25) **STIPULATION AND**
26 Plaintiff,) **[PROPOSED]**
27) **ORDER REGARDING STAY OF**
28 v.) **PROCEEDINGS AND CASE**
29) **SCHEDULE**
30 TWITTER, INC.,)
31)
32 Defendant.)
33)
34)
35)

36 STIPULATION AND [PROPOSED] ORDER
37 REGARDING STAY OF PROCEEDINGS
38 AND CASE SCHEDULE
39 CASE NO.: 14-CV-02843-VC

1 Plaintiff Beverly Nunes (“Plaintiff”) and Defendant Twitter, Inc. (“Twitter”) (collective-
2 ly, “the Parties”) hereby request an amendment to the Stipulated Order Continuing Stay of Pro-
3 ceedings and Modifying Case Schedule entered by the Court on July 10, 2015 (Dkt. 58) (the “Ju-
4 ly 10 Stipulation and Order”). In support of that request, the parties agree as follows:

5 1. The July 10 Stipulation and Order was based in part on the pendency of multiple
6 petitions before the FCC seeking rulings on issues pertaining to the Telephone Consumer Protec-
7 tion Act (“TCPA”) – the statute at issue in this action. The FCC voted on those petitions on June
8 18, 2015, and the FCC released its written Declaratory Ruling and Order, FCC 15-72, on July 10,
9 2015 (the “FCC Order”). Among other rulings pertinent to this action, the FCC interpreted the
10 terms “automatic telephone dialing system,” and “prior express consent of the called party.”
11 Those and other aspects of the FCC Order are the subject of multiple appeals that have been con-
12 solidated in the U.S. Court of Appeals for the District of Columbia. *See ACA Int’l v. FCC*, No.
13 15-1211 (D.C. Cir.) (consolidated with Nos. 15-1214, 1218, 1244, 1278).

14 2. The FCC Order also discusses the issue of who can be deemed to have made calls
15 within the meaning of the TCPA so as to face potential TCPA liability for those text messages.
16 Twitter believes that, based on the FCC Order, it cannot be deemed to have made text message
17 calls within the meaning of the TCPA and is therefore absolved of liability in this case. Twitter
18 also contends that it is immune from liability as an interactive computer service provider under
19 the Communications Decency Act (“CDA”), 47 U.S.C. §230(c)(1). Plaintiff disagrees and be-
20 lieves that under the FCC Order and existing law Twitter is liable for making text message calls
21 within the meaning of the TCPA. The Parties do agree, however, that whether Twitter made the
22 text message calls within the meaning of the FCC’s Order and the TCPA, and whether §230(c)
23 affords immunity to Twitter, are questions that can be brought before the Court on summary
24 judgment motions with what they anticipate will be minimal discovery and/or stipulated facts.

25 3. Given the potentially dispositive nature of these issues, and in light of the uncer-
26 tainty created by the pending appeals of the FCC Order on other issues in the case, the Parties
27 agree that the case should proceed at this time only with respect to the maker-of-the call and

§230(c) issues. With respect to issues involving an “automatic telephone dialing system,” and “prior express consent of the called party,” the case should be stayed pending the FCC Order appeals.

THE PARTIES THEREFORE STIPULATE to amend the July 10 Stipulation and Order through their undersigned counsel, subject to the Court’s approval, as follows:

1. The Parties shall proceed with discovery limited to the issues of whether Twitter made the text message calls within the meaning of the FCC’s Order and the TCPA and the asserted immunity under §230(c) based on the existing case schedule entered on July 10, 2015: Discovery on these issues shall be completed by January 13, 2016; Initial Expert Witness statements shall be submitted by January 29, 2016; Rebuttal Expert Witness statements shall be submitted by February 12, 2016; Motions for Summary Judgment on issue of whether Twitter made text message calls shall be heard on June 2, 2016 at 10:00 a.m. The Parties shall work in good faith to stipulate to the facts pertinent to these motions.

2. The stay of proceedings in the matter otherwise shall remain in place pending the FCC Order appeal. Should the case continue following resolution of the contemplated summary judgment motions, the Parties will meet and confer regarding an appropriate schedule.

DATE: September 8, 2015

/s/ David H. Kramer

David H. Kramer
WILSON SONSINI GOODRICH & ROSATI

Attorneys for Defendant Twitter, Inc.

DATE: September 8, 2015

/s/ John G. Jacobs

John G. Jacobs (*PRO HAC VICE*)
JACOBS KOLTON, CHTD
Jeffrey F. Keller
KELLER GROVER, LLP

Attorneys for Plaintiff Beverly Nunes

1 PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING, IT IS SO ORDERED.

2 SIGNED this 10th day of September, 2015.

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5 VINCE CHHABRIA
6 UNITED STATES DISTRICT JUDGE
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CERTIFICATION

I, David H. Kramer, am the ECF User whose identification and password are being used to file this **STIPULATION AND [PROPOSED] ORDER REGARDING STAY OF PROCEEDINGS AND CASE SCHEDULE**. In compliance with Civil Local Rule 5-1(i), I hereby attest that John G. Jacobs has concurred in this filing.

DATE: September 8, 2015

/s/ David H. Kramer

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